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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Jeremy Gough,

Petitioner,

V.

Unknown Party, et al.,

Respondents.

No. CV-24-03034-PHX-JAT (JFM)

ORDER

On November 4, 2024, Petitioner Jeremy Gough, who is confined in the Federal Correctional Institution-Phoenix (FCI-Phoenix), filed a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (“Petition”) and paid the filing fee. In a December 20, 2024 Order, the Court dismissed the Petition with leave to amend because it was not filed on a court-approved form. The Court gave Petitioner 30 days to file an amended petition using the court-approved form included with the Order.

On January 17, 2025, Petitioner filed an Amended § 2241 Petition (Doc. 4). The Court will dismiss the Amended Petition and this action.

I. Amended Petition

In his Amended Petition, Petitioner names FCI-Phoenix Warden Jason Gunther as Respondent. Petitioner raises one ground for relief concerning the application of earned time credits under the First Step Act to his sentence. Petitioner asserts that the Federal Bureau of Prisons (BOP) is not applying earned time credits to eligible prisoners if they have medium or high recidivism risk scores. Petitioner contends he is participating in

1 eligible programming while working two jobs and has earned a year off his sentence and
2 an extra eighteen months in a halfway house, but because he has a medium recidivism risk
3 score, his earned time credits are not being applied. Petitioner claims the BOP is
4 “interpreting laws as they see fit – not as set by [] Congress.”

5 **II. Discussion**

6 The First Step Act provides that eligibility for application of credits is confined to a
7 prisoner who:

8 (B) has shown through the periodic risk reassessments a demonstrated
9 recidivism risk reduction or has maintained a minimum or low recidivism
10 risk, during the prisoner’s term of imprisonment;

11 * * *

12 (D)(i) in the case of a prisoner being placed in prerelease custody, the
13 prisoner—(I) has been determined under [PATTERN] to be a minimum or
14 low risk to recidivate pursuant to the last 2 reassessments of the prisoner; or

15 * * *

16 (D)(ii) in the case of a prisoner being placed in supervised release, the
17 prisoner has been determined under [PATTERN] to be a minimum or low
18 risk to recidivate pursuant to the last reassessment of the prisoner.

19 18 U.S.C. § 3624(g)(1).

20 To the extent that Petitioner contends the BOP must apply earned time credits to his
21 sentence notwithstanding his recidivism risk score, Petitioner “misunderstands a crucial
22 part of the [First Step Act] concerning not just [his] ability to earn time credits, but the
23 application of those credits.” *See Brown v. Garrett*, 7:22-cv-00551-AMM-JHE, 2022 WL
24 18161601, at *3 (N.D. Ala. Dec. 22, 2022), *Report and Recommendation adopted by* 2023
25 WL 130519 (N.D. Ala. Jan. 9, 2023). Although a prisoner is free to *earn* time credits as
26 an inmate with a medium or higher risk recidivism level, under 18 U.S.C.
27 § 3624(g)(1)(D)(i)-(ii), the BOP cannot *apply* those time credits to his sentence unless and
28 until he has a minimum or low risk recidivism level for two consecutive assessments for

1 prerelease custody, or a minimum or low risk recidivism level for the last assessment for
2 supervised release. *See id.* This is because the First Step Act “expressly provides that
3 while an inmate who has a PATTERN score of medium or high risk of recidivism is eligible
4 to complete [evidence-based recidivism reduction] programs and [productive activities],
5 the successfully completed programs and [productive activities] are not applied towards
6 the inmate’s time credits until [he] has received a minimum or low risk PATTERN score
7 for two consecutive assessments.” *Id.*; *see also Purdy v. Carter*, BAH-24-582, 2024 WL
8 4651275, at *5 (D. Md. Nov. 1, 2024) (citing 18 U.S.C. § 3624(g)(1)(B), (D)(i)(I), and
9 (D)(ii)) (noting that the First Step Act “unambiguously mandates that only inmates with
10 low and minimum recidivism scores are eligible to have earned time credits under the FSA
11 applied toward pre-release custody or supervised release”).

12 Thus, to the extent that Petitioner “takes issue with the requirement of achieving
13 minimum or low recidivism risk scores prior to having his earned credits applied to his
14 sentence, his challenge is to the statute, not the regulation.” *Purdy*, 2024 WL 4651275, at
15 *5. “[T]he Attorney General and the Bureau of Prisons are entrusted with sole authority
16 to compute federal sentences.” *Clinkenbeard v. King*, Civ. No. 23-3151 (JRT/LIB), 2024
17 WL 4355063, at *4 (D. Minn. Sept. 30, 2024) (citing 28 C.F.R. § 0.96); *see also* 18 U.S.C.
18 § 3632(a), (a)(6) (directing the Attorney General to develop a “risk and needs assessment
19 system” that, among other things, will “determine when to provide incentives and rewards
20 for successful participation in evidence-based recidivism reduction programs or productive
21 activities”); 18 U.S.C. § 3632(d)(4)(A)(ii) (giving further discretion to the BOP to dole out
22 additional time credits to prisoners it deems are at lower risks of recidivating); *Mero v.
23 Yates*, 2:22-CV-72-DPM-ERE, 2022 WL 17653228, at *5 (E.D. Ark. Sept. 27, 2022) (“The
24 earned time credit program is new and multifaceted, and the authority to implement the
25 program and calculate an inmate’s time credits is delegated to the BOP, not the federal
26 courts.”). “The BOP’s use of the PATTERN tool to restrict application of [First Step Act]
27 credits to prisoners with minimum or low risk recidivism scores does not amount to an
28 agency’s ‘interpretation’ of a statute.” *Purdy*, 2024 WL 4651275, at *5. “Rather, the BOP

1 has done what Congress commanded it to do: create a method by which it can be
2 determined whether a prisoner is likely to recidivate and to withhold FSA credits until that
3 likelihood is diminished to a minimum or low risk.” *Id.*

4 For the foregoing reasons, the Court will dismiss the Amended Petition and this
5 case.

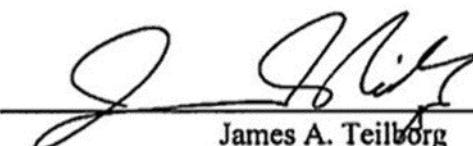
6 **IT IS ORDERED:**

7 (1) Petitioner’s Amended Petition Under 28 U.S.C. § 2241 (Doc. 4) and this case
8 are **dismissed**.

9 (2) The Clerk of Court must enter judgment accordingly and close this case.

10 (3) Although Petitioner has brought his claims in a § 2241 petition, a certificate
11 of appealability is required where a § 2241 petition attacks the petitioner’s conviction or
12 sentence. *See Porter v. Adams*, 244 F.3d 1006, 1007 (9th. Cir. 2001). Pursuant to Rule
13 11(a) of the Rules Governing Section 2255 Cases, in the event Petitioner files an appeal,
14 the Court declines to issue a certificate of appealability because reasonable jurists would
15 not find the Court’s procedural ruling debatable. *See Slack v. McDaniel*, 529 U.S. 473,
16 484 (2000).

17 Dated this 11th day of February, 2025.

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James A. Teilborg
Senior United States District Judge

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